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*Proposed Counsel to the Debtor and
Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11
:
CHOXI.COM, INC., a/k/a NOMORERACK.COM, : Case No. 16-13131 (SCC)
INC., :
:
Debtor. :
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**DECLARATION OF TRACY L. KLESTADT PURSUANT TO LOCAL BANKRUPTCY
RULE 9077-1 IN SUPPORT OF ORDER TO SHOW CAUSE SCHEDULING HEARING
ON SHORTENED NOTICE**

TRACY L. KLESTADT hereby declares, under penalty of perjury, as follows:

1. I am a partner of the firm of Klestadt Winters Jureller Southard & Stevens, LLP, proposed counsel to the debtor and debtor-in-possession in the above-captioned chapter 11 case. I submit this declaration (this “Declaration”) pursuant to Rule 9077-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York in support of the entry of an Order to Show Cause (the “Order to Show Cause”) scheduling a hearing on shortened notice for consideration of the Debtor’s *Motion Pursuant to Sections 105(a), 332 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 (A) for an Order (i) Approving License Agreement with Stalking Horse Bidder on an Interim Basis, (ii) Scheduling Bid Procedures Hearing and (iii) Directing the Appointment of a Consumer Privacy Ombudsman, (B) For an*

Order (i) Approving Bid Protections, (ii) Approving Bid Procedures, (iii) Scheduling an Auction and Final Hearing and (iv) Approving the Form and Manner of Notice Thereof and (C) For an Order Approving License Agreement on a Final Basis or Sale to Successful Bidder Free and Clear of All Liens, Claims and Encumbrances (the “Motion”) filed contemporaneously herewith.

2. The facts relevant to the Motion¹ and the Debtor’s request for entry of the Order to Show Cause are set forth in greater detail in the Motion.
3. The Debtor’s request for the entry of the Order to Show Cause is made in furtherance of the terms and conditions of the License Agreement, which require the Debtor to obtain entry of the Interim Order on or before December 8, 2016. Entry of the Interim Order on an expedited basis is a material condition to the Stalking Horse’s willingness to enter into the License Agreement with the Debtor. The Stalking Horse’s ability to use the Licensed Property as soon as possible was an important factor motivating the Stalking Horse Bidder’s entry into the License Agreement, as it will allow the Stalking Horse Bidder to capitalize on what remains of the peak season for the e-commerce retail industry. The Stalking Horse Bidder is not willing to take on the risks and expenses of resuming the Debtor’s business prior to this Court’s approval of the Bid Protections and the other material provisions contained in the Interim Order.
4. Further, an expedited hearing allowing approval of the Interim Order on the timeline required under the License Agreement is in the best interests of the Debtor’s estate and creditors. The Debtor is currently not operating. Every day that passes is a day of the peak sales season that is lost for the Debtor to generate revenue. Approval of the License Agreement on an interim basis on or before December 8, 2016 will allow the Stalking Horse Bidder to reengage the Debtor’s customers in time to capitalize upon the enhanced revenue that can be realized prior to the close of the holiday season, while still allowing the Debtor the opportunity to market the Licensed

¹ Terms capitalized but not defined herein shall have the meanings ascribed to them in the Motion.

Property for better and higher offers prior to entry of the Final Order. In addition, parties in interest will have another opportunity to be heard at a separate hearing to be held on approval of the License Agreement on a final basis and any other relief to be granted in the Final Order.

5. For the foregoing reasons, the Debtor believes that the Order to Show Cause scheduling the hearing for approval of the Interim Order on **December 8, 2016 at 10:00 a.m.** is in the best interests of the Debtor's estate and respectfully requests that it be entered.
6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
December 5, 2016

/s/ Tracy L. Klestadt

Tracy L. Klestadt